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3637

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT EXAMINING OPERATION

Applicants:	KEIL, KURT	Group Art Unit:	3637
Serial No.:	09/892,359	Docket No.:	KK#2-3
Filed:	June 28, 2001	Preliminary Class:	
Mark:	STRUCTURAL TUBING MEMBERS WITH FLARED OUT END SEGMENTS FOR CONJOINING	Examiner:	Phi Dieu Tran A.

FURTHER CASE STATUS INQUIRY PURSUANT TO 37 C.F.R. §1.14

Commissioner for Patents
ATTN: LIE. M. Byars
Box 1450
Alexandria, VA 22313-1450

Sirs:

The above-captioned, non-provisional (examinable) patent application was filed on 28 June 2001 (now long past its first anniversary), and it claims an effective filing date of 29 March 1999 from USSN 09/277,868, now U.S. Letters Patent 6,279,288 B1, granted August 28, 2001 (Exhibit A).

On 05/17/2004, Art Unit 3637 mailed a First Action on the merits of the C-I-P application (Action Summary sheet enclosed as Exhibit A). Applicant promptly responded on June 4, 2004 with a first Reply Brief (copied as Exhibit B) having two Riders addressing claim revisions. The returned postal car receipt from OIPE was stamped June 4, 2004. (Enclosure C).

This was followed by a Notice of Non-Compliant Amendment from LIE Margaret Byers (703) 308-1252 (Enclosure D). Applicant promptly responded to that PTO Notice with timely supplemental brief filed July 26, 2004 (Exhibit E) recopied without its attachment. Receipt by the PTO/OIPE was confirmed by return postal card receipt of July 26, 2004 (Exhibit F).

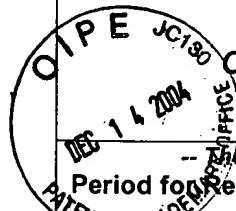
Since that complete submission, nothing more has been heard from either the OIPE or the group unit 3637 on this long-pending (since June 2001) application.

Very truly yours, (CVER)
D. A. S. [Signature]

Date: December 11, 2004
Enclosures: Above & postal card receipt

cc: Client

Arthur R. Eglington
113 Cross Creek Drive
Chestnut Hill, R.D. 5
Pottsville, PA 17901
(570) 385-5021
Reg. No.: 19,868



ANS 5/22/04

Office Action Summary

Application No.	Applicant(s)	
09/892,359	KEIL, KURT A.	
Examiner	Art Unit	
Phi D A	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

~~AT&T~~ A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 June 2001.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-26 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-26 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. ____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date .

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: ____ .

EXA



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT EXAMINING OPERATION

Application of:

KURT A. KEIL

Serial No.: 09/892,359

Filed: June 28, 2001

Title: STRUCTURAL TUBING MEMBERS
WITH FLARED OUT END SEGMENTS
FOR CONJOINING

Group Art Unit No.: 3637

Supervisory Examiner: Lanna Mai

Phone No.: (703) 306-9136
(903) 872-9306

Examiner: Phi Dieu Tran A

Patent & Trademark Office Comissioner

ATTN: Group 3627

P.O. Box 1450

Alexandria, VA 22313-1450

S: JUN 04 2004

REPLY BRIEF RESPONDING TIMELY TO OFFICE ACTION OF 5/20/2004

Sirs:

This communication is in response to the belated First Office Action on the merits, mailed May 20, 2004, with an extendable shortened statutory period currently set to expire August 20, 2004.

PRELIMINARY REMARKS ON ADMINISTRATIVE ISSUES

Original claims 1 to 26 remain under active consideration with only original claims 21 and 24 being amended herewith. They both recite the preferred material as being sheet steel. Also, independent channel member claims 21-26 are rejected for obviousness over a single citation, which will be addressed below.

IN THE SPECIFICATION

At page 1, line 11, emend to recite ≈U.S. Patent No. 6,279,288, granted August 28, 2001.=

IN THE CLAIMS AS TO REJECTION PER 35 U.S.C. SECTION 112

Amended claim 21 has been amended to obviate its rejection and is consistent with the Examiner's suggested amendment. Both claims 21 and 23 are amended to recite steel stock, which is the preferably chosen material of fabrication (Spec. pg. 23 and 24).

APPLICANT RESPONSE TO DOUBLE PATENTING REJECTION

The position of the Examiner is duly noted in requiring "Timely filed terminal disclaimer in compliance with 37 C.F.R. 1.321(c)" etc. For that requirement, Applicant has employed PTO/SP/26 form titled "Terminal Disclaimer to Obviate a Double Patenting Rejection Over a Prior Patent." It has been duly executed by the sole patentee of the prior patent being relied upon, who is the sole Applicant for the present examined continuation application. This formal submission is deemed to fully obviate this ancillary ground of rejection and the lifting thereof is courteously solicited.

CLAIMS REJECTION PURPORTEDLY BASED ON SHER 4,054,268 (1977)

Rejected claims 21-22 and 24-26 are directed to rigid channel members having a three-sided rectangular cross section (see Fig. 19 as to claims 21 and 22); and, alternately, to a rigid, angle-shaped member from extrudable aluminum stock having two member sidewalls (Fig. 20 as to claims 24 to 26). Incidentally, independent claim 26 is to a rigid channel member with three member sidewalls, not to the "right angular in cross-section" members of claim 24 and 25.

This ground of rejection is respectfully traversed based on the following analysis of the single Sher citation which neither teaches nor suggests the use of either the two or three-sided channel members of these four claims. Rather, Sher teaches a "Glass Panel railing" adapted along its lower edge (pad 42 in Fig. 3) for mounting along a stairwell." Also per Fig. 3, the vertical glass

panel 22 is clamped between opposing complementary bracket-like support members 36/38, each of which are flanged at their upper ends to hold the pane. Adjustment plates 47/50 and pad 48/52 fill the recess defined by opposing brackets 36/38. This figure, and associated specification passages, simply do not suggest a transverse configuration for the bracket members which is rectangular in cross section or right angular in cross-section. Looking now to the Examiner's cited Sher Fig. 7 in particular, there is seen an alternate embodiment which depicts dissimilarly-shaped bracket members, one of which is rigid pressure plate 50", surmounted by opposing dual-component, trim members 158 and 160. Alternate side bracket 100 grips glass pane 22' at spaced-apart points.

Neither of these depicted embodiments teaches or suggests a rigid channel member formed from sheet steel with a transverse configuration of either a rectangular cross section (see Applicant Fig. 19) or of a right angular cross section (see Applicant Fig. 20) as set forth in the presently rejected claims. Moreover, and quite clearly, this citation makes no teaching or suggestion of a first or any pair of externally-placed linear grooves arrayed in parallel; and then being located proximal to one of the seams of the center sidewall in the rectangular cross section, for example. There is simply no suggestion of or where any linear groovings could be engrafted on the Sher rail mounting brackets. Such are for the express purpose of permitting controlled separation of at least one sidewall of the channel member.

This citation wholly lacks motivation for engrafting the inventive channel members of the stated cross sections. The present channel members are always coupled with one or more pairs of functional linear groovings.*

* Cf. *ACS Hosp. System v. Montefiore*, 732 F.2nd 1572, 1577 (Fed. Cir. 1984) and *In re Oetiker*, 977 F.2nd 1443, 1447 (Fed. Cir. 1992) stating that there must be some reason, suggestion, or motivation found in the prior art, whereby a person of ordinary skill in the field of the invention would make the combination. Glass panel railing brackets are manifestly not in the art of building complex scaffolding using working and flaring of malleable metal channel components of variable lengths and cross sections.

This panel railing and building structure tubing members are manifestly not found in the art of working and flaring malleable metal tubings like that of sheet steel, and/or of aluminum. This basis of claim rejection has been fully overcome and should be withdrawn as to amended original claims 21-22 and 24-26. Riders A and B present those claims necessarily amended herewith in the marked up form, and the clean copy form respectively.

In sum, the Section 112 rejections have been fully met by the instant emendments of independent claims 21 and 24 and those claims dependent therefrom; a doubling patenting rejection is obviated by the here-submitted terminal disclaimer; and recall of the rejection of selected claims for obviousness, based on a single remote art citation, the non-pertinence of which is set forth above, should place this case in condition for a Notice of Allowance. Such PTO actions are courteously solicited.

Enclosures:
Term. Disclaimer
Clean Cover Page of Spec.
Riders A&B

Very truly yours,



Arthur R. Eglington
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(570) 385-5021

CERTIFICATE OF MAILING

The undersigned hereby certifies that this correspondence is being deposited with the United States Postal service as First Class Certified Mail in an envelope addressed to: Patent & Trademark Office, Attn: Group 3627, P.O. Box 1450, Alexandria, VA, 22313-1450, on June 2, 2004.

Date: June 2, 2004


Arthur R. Eglington, Esq.



Ex. C

U.S. Commissioner of Patents & Trademarks
Washington, DC 20231

Please acknowledge receipt of accompanying
papers by placing your mail room stamp hereon

File Date 28Jun01 File No. 09/892-359
Papers enclosed.

Exd. Pat. Appln. on STRUCTURAL TUBING MEMBERS etc

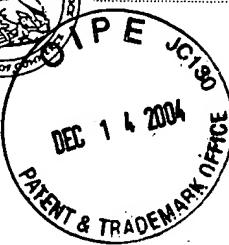
1. Reply Brief responding to PTO Action
2. Terminal Disclaimer forme - executed.
3. Updated title page of Pat. Spec.
4. Rider to Brief on Marked Up Claims
5. Rider to Brief on Clean Cppy of claims set
6. This postal card return receipt fees

7. Prenter check 31/11/01 \$55
8. FEE TRANS FORM





UNITED STATES PATENT AND TRADEMARK OFFICE



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

9
Paper No. _____

Notice of Non-Compliant Amendment (37 CFR 1.121)

The amendment document filed on 6/4/04 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121, as amended on June 30, 2003 (see 68 Fed. Reg. 38611, Jun. 30, 2003). In order for the amendment document to be compliant, correction of the following item(s) is required. Only the corrected section of the non-compliant amendment document must be resubmitted (in its entirety), e.g., the entire "Amendments to the claims" section of applicant's amendment document must be re-submitted. 37 CFR 1.121(h).

THE FOLLOWING CHECKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- 1. Amendments to the specification:
 - A. Amended paragraph(s) do not include markings.
 - B. New paragraph(s) should not be underlined.
 - C. Other _____
- 2. Abstract:
 - A. Not presented on a separate sheet. 37 CFR 1.72.
 - B. Other _____
- 3. Amendments to the drawings: _____
- 4. Amendments to the claims:
 - A. A complete listing of all of the claims is not present.
 - B. The listing of claims does not include the text of all claims (including withdrawn claims)
 - C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified.
 - D. The claims of this amendment paper have not been presented in ascending numerical order.
 - E. Other: _____

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP Sec. 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/ropa/preognotice/officelbyer.pdf>.

If the non-compliant amendment is a **PRELIMINARY AMENDMENT**, applicant is given ONE MONTH from the mail date of this letter to supply the corrected section which complies with 37 CFR 1.121. Failure to comply with 37 CFR 1.121 will result in non-entry of the preliminary amendment and examination on the merits will commence without consideration of the proposed changes in the preliminary amendment(s). This notice is not an action under 35 U.S.C. 132, and this **ONE MONTH** time limit is not extendable.

If the non-compliant amendment is a reply to a **NON-FINAL OFFICE ACTION** (including a submission for an RCE), and since the amendment appears to be a *bona fide* attempt to be a reply (37 CFR 1.135(c)), applicant is given a **TIME PERIOD** of ONE MONTH from the mailing of this notice within which to re-submit the corrected section which complies with 37 CFR 1.121 in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD ARE AVAILABLE UNDER 37 CFR 1.136(a)**.

If the amendment is a reply to a **FINAL REJECTION**, this form may be an attachment to an **Advisory Action**. The period for response to a final rejection continues to run from the date set in the final rejection, and is not affected by the non-compliant status of the amendment.

Margaret Byars
Legal Instruments Examiner (LIE)

(703) 308-1252
Telephone No. _____

EX-D to INQUIRY OF



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT EXAMINING OPERATION

In re Application of:
KURT A. KEIL

Serial No.: 09/892,359
Filed: June 28, 2001

Title: STRUCTURAL TUBING MEMBERS
WITH FLARED OUT END
SEGMENTS FOR CONJOINING

Group Art Unit No.: 3637

Supervisory Examiner: Lanna Mai

Phone No.: (703) 306-9136
(903) 872-9306

Examiner: Phi Dieu Tran A

Patent & Trademark Office Commissioner
ATTN: OIPE – LIE Margaret Byers
P.O. Box 1450
Alexandria, VA 22313-1450

Phone: (703) 308-1252

S: JULY 26, 2004

TIMELY SUPPLEMENTAL BRIEF RESPONDING TO OIPE LETTER MAILED 07/20/04

Sirs:

This is further to the substantive Reply Brief and enclosures filed June 4, 2004, to which the OIPE has responded with a form letter "Notice of Non-Compliant Amendments", on which formal two boxes are checked, specifically 4A "A Complete listing of all of the claims is not present," and 4B, "The listing of claims does not include the text of all claims (including W/D claims).

The preliminary remarks on page 1 of the June 4th brief identified claims 1 to 26 as being going forward, , but claims 21 and 24 only thereof were once amended. Claims 21 and 24 were earlier presented in a first enclosure on the marked up version, including their status; and a clean set of the same two claims with no annotations were also provided. All other claims 1 to 20, 22, 23, 25, and 26 were continued in this case. To rectify the oversight as to not reproducing all of the pending claims, whether original or amended, two substitute sets of claims are now advanced.

Firstly, the earlier marked up version regarding only claims 21 and 24 only is recopied for

EX. E

comparison purposes and also provided is a complete set of all 26 claims in the case (clean amended claims set) but now with each claim annotated by a parenthetical expression, reflecting the current status of this examined application and each claim.

It is respectfully submitted that the present explanation, the recopied set of marked up claims 21 and 24 only, and the complete set of clean claims (all status identified) meet all requirements of the recent OIPE letter. This case is thought to be in condition to be sent forward to the Patent Examiner, Phi Dieu Tran A

Very truly yours,

Enclosures:

Marked up claims 21 and 24
Clean set of all clean claims
Copy of OIPE letter

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CERTIFICATE OF MAILING

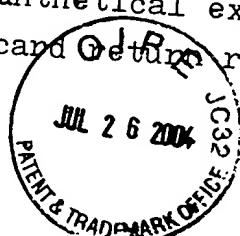
The undersigned hereby certifies that this correspondence is being deposited with the United States Postal service as First Class Certified Mail in an envelope addressed to: Patent & Trademark Office, ATTN: OIPE – LIE Margaret Byers , P.O. Box 1450, Alexandria, VA, 22313-1450, on July _____, 2004.

Date: July , 2004

Arthur R. Eglington, Esq.



U. S. Commissioner of Patents & Trademarks
Washington, DC 20231
Please acknowledge receipt of accompanying
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File No. 28Jun01 File No. 09/XXX 892,359 EX. F
Date 28Jun01 16el
Fees enclosed.
Exd. Pat. Appln. onN STRUCTURAL TUBING MEMBERS etc
i. Supplemental Brief to Brief filed 4 June 2004
2. Copied Encl of Rider on Marked Up Claims
3 Revised Enclosure Clean Text of all 26 claims
with parenthetical expression on status
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No Fees